



S. 743, Marketplace Fairness Act

- Authorizes SSUTA; a member state may exercise authority to require remote seller to collect state and local sales and use taxes, but only if the MFA's minimum simplification requirements are met. Authority may be exercised 90 days after state publishes notice of intent, but no earlier than the first day of the calendar quarter that is at least 90 days after enactment of this Act.
- States not members of SSUTA may require remote seller to collect state and local sales and use taxes only if state adopts minimum simplification requirements. Authority commences no earlier than the first days of the calendar quarter that is at least 6 months after the state (1) enacts legislation specifying the tax or taxes to which the minimum simplification requirements apply, and (2) specifying the products and services otherwise subject to tax to which the Act will not apply.
- Minimum simplification requirements
 - Single entity for administration, return processing and audits
 - Single audit for all state and local taxing jurisdictions within the state
 - Single sales and use tax return used by remote sellers
 - States must provide a uniform sales and use tax base among the state and local taxing jurisdictions
 - Sourcing definition:
 - To where the item is received by the purchaser, based on the location indicated by instructions for delivery that purchaser gives to seller;
 - Where no delivery location is specified, sale is sourced to customer's address that is either known to the seller, or if not known, obtained by seller during consummation of transaction, including the address of customer's payment instrument if no other address is available;
 - If address is unknown and billing address unobtainable, sale is sourced to address of seller from which sale was made;

- States may not require a remote seller to file any more frequently than returns for non-remote sellers. No local jurisdiction may require a remote seller to file a return or to collect a tax to a local government.
- In order to require collection by remote sellers, SST and other States must
 - Provide remote sellers:
 - information indicating the taxability of products, services and exemptions in the State rates and boundaries database;
 - free software that calculates sales and use tax due on each transaction, that files sales and use tax returns, and that is updated to reflect rate changes;
 - certification procedures for certified software providers, who shall be capable of calculating and filing sales and use taxes in all qualified states.
 - Relieve remote sellers from liability if liability is the result of an error or omission made by the certified software provider.
 - Relieve certified software providers from liability if the liability is the result of misleading or inaccurate information provided by a remote seller.
 - Relieve remote sellers and certified software providers from liability if liability is the result of incorrect information or software provided by the state.
 - Provide remote sellers and certified software providers with 90 days' notice of a rate change, and relieve sellers and certified software providers from liability at the immediately preceding effective rate during the 90-day notice period if the required notice is not provided.
- Small seller exception: SSUTA states and states that meet the minimum qualifications are authorized to require a remote seller to collect only if seller has gross annual receipts in total remote sales in the US exceeding \$1 million dollars. To determine whether the threshold has been met:
 - The sales of all related persons within the meaning of Section 267 (b) and (c) or Section 707(b)(1) of the Internal Revenue Code shall be aggregated;
 - Persons with 1 or more ownership relationships shall also be aggregated if such relationships were designed with a principle purpose of avoiding these rules.
- The Act does not apply to franchise, income occupation or any other type of taxes, nor does it affect the application of such taxes, nor does it enlarge or reduce the State's authority to impose such taxes.
- The Act does not create any nexus between a person and a State or locality.
- The Act shall not be construed as permitting or prohibiting a State from:

- licensing or regulating any person;
 - requiring any person to qualify to transact intrastate business;
 - subjecting any person to State or local taxes unrelated to the sale of goods and services;
 - exercising authority over matters of interstate commerce.
- The Act does not encourage States to impose sales and use taxes on any goods not taxed prior to the Act's passage.
- Applies only to remote sellers, does not apply to intrastate sales or sourcing rules. Streamlined states shall comply with all intrastate provisions of the SSUTA.
- Does not affect the Mobile Telecommunications Sourcing Act.